Executive summary

The Italian Budget Law for 2018 (Law no. 205 of 27 December 2017, published on 29 December 2017 entered into force on 1 January 2018) and Law Decree no. 148/2017 (Law no. 172/2017, published on 5 December 2017, entered into force on 6 December 2017), introduced several changes to the Italian Value Added Tax (VAT) Law.

This Alert summarizes the key measures.

Detailed discussion

Neutralization of the tax rate increase announced for FY2018

The increase of the ordinary VAT rate has been postponed to 2019, 2020 and 2021. Therefore the 22% ordinary and 10% reduced VAT rates continue to apply in 2018.

As a consequence of the postponement the following rates will apply starting as of 1 January 2019.

Ordinary rates:
- 24.2% starting from 1 January 2019
- 24.9% starting from 1 January 2020
- 25% starting from 1 January 2021
Reduced rates:

- 11.5% starting from 1 January 2019
- 13% starting from 1 January 2020

The Italian Budget Law also provides some specific provisions and interpretations in relation with the VAT rates applicable to the building and construction sector, entertainment and sports activities that are not covered by this Alert.

Electronic invoicing extension

A general business to business (B2B) and business to consumer (B2C) e-invoicing obligation will apply starting from 1 January 2019 with reference to transactions performed between persons established/resident in Italy, permanent establishments in Italy of foreign taxable persons, as well as non-established taxable persons VAT registered in Italy.

However, as for both the public subcontract sector and for supplies of petrol or diesel fuel intended for use as motor fuel, the electronic invoicing obligation will be effective as from 1 July 2018.

In addition, the electronic invoicing will be mandatory starting from 1 September 2018 (and no longer 1 January 2018) with reference to “Tax Free Shopping” (e.g., invoices issued for supply of goods to private customers with a non-European Union (EU) residence/domicile).

If a non-electronic invoice is issued, the invoice is considered as not issued and a penalty from 90% to 180% of the related VAT is applicable (penalty for missing or late invoicing).

The Italian Budget Law also provides that the VAT charged on automotive fuel purchases is recoverable, only if the payment is made through credit and debit cards, prepaid cards, or by any other suitable means of payment to be identified by an appropriate implementing provision.

Extension of the split payment mechanism

The split payment mechanism is applicable to:

1) National, regional and local economic public entities, including special companies and public service companies
2) Foundations owned by public administrations for an overall percentage of the endowment fund not lower than 70%
3) Companies controlled by the Government or by individual Ministries
4) Companies directly or indirectly controlled by public administrations or by the companies under 1), 2), 3) and 5)
5) Companies owned – for an overall percentage of capital not lower than 70% - by public administrations or by entities and companies under 1), 2), 3) and 4)
6) Listed Companies included in the FTSE MIB index of Borsa Italiana (i.e., the Italian Stock Exchange), identified for VAT purposes

These provisions are effective as from 1 January 2018 with reference to transactions for which an invoice is issued from this date on.

The Ministry of the Economics and Finance (MEF) updated the list – valid starting from 2018 – of the taxpayers for whom the application of the split payment mechanism will apply, available on the following website: [http://www1.finanze.gov.it/finanze2/split_payment/public/#/#testata](http://www1.finanze.gov.it/finanze2/split_payment/public/#/#testata).

Communication of the issued and received invoices

With reference to the Communication of data of invoices issued and received:

- The taxpayer has the option to file the Communication on a quarterly or six-month basis.
- The deadline to file the Communication related to the first six months or to the second quarter 2018 is postponed from 16 September 2018 to 30 September 2018.

Below is a summary of the above-mentioned deadlines both for quarterly or six-month submissions:

<table>
<thead>
<tr>
<th>Quarterly Communication of issued and received invoices</th>
<th>Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1 2018</td>
<td>31 May 2018</td>
</tr>
<tr>
<td>Q2 2018</td>
<td>1 October 2018*</td>
</tr>
<tr>
<td>Q3 2018</td>
<td>30 November 2018</td>
</tr>
<tr>
<td>Q4 2018</td>
<td>28 February 2019</td>
</tr>
</tbody>
</table>

* Since the 30 September falls on Sunday, the deadline is moved to the first working day available, which is 1 October 2018.
Six-months Communication of issued and received invoices

<table>
<thead>
<tr>
<th></th>
<th>Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>First half of 2018</td>
<td>1 October 2018</td>
</tr>
<tr>
<td>Second half of 2018</td>
<td>28 February 2019</td>
</tr>
</tbody>
</table>

Further to the introduction of electronic invoicing, starting from fiscal year 2019, this Communication will be repealed.

Moreover, the taxpayer has the option to file the data of the summary document instead of indicating the data of every issued and received invoice if their cumulative amount is lower than €300. The taxpayer must indicate at least the tax code of the supplier and the tax code of the customer, date and number of the summary documents, total taxable amount and total tax amount, separately indicated per VAT rate.

Finally, no penalties are due for the incorrect filing of data with reference to the Communication for the first half of 2017, if the correct information is filed by 28 February 2018.

Transactions carried out by and to a VAT group – Implementation of Skandia principles

The Italian Budget Law has introduced paragraphs 4-bis to 4-sexies in Article 70-quinquies of Italian VAT Law, implementing the principles set in the Court of Justice of the European Union Skandia judgment (C-7/13). The new provision brings within the scope of VAT certain head office-branch and branch-to-branch transactions, where one or both are members of VAT groups. In particular:

- Transactions (both supplies of goods and services), made by an Italian VAT grouped company (or branch) to its overseas branch (or head office) are treated as supplies made by the Italian VAT Group to a third party. Likewise, supplies from the overseas branch (or head office) to its Italian VAT grouped head office (or branch) are also within the scope of VAT.
- Transactions made by an Italian company or branch to its overseas branch (or head office) which is locally VAT grouped in another EU Member State are supplies for VAT purposes. Similarly, supplies made by the overseas branch or company VAT grouped in another EU Member State to its Italian branches or head office (whether grouped or not in Italy) are within the scope of VAT.

- The new provisions also state that, if consideration is provided for the transactions, the taxable amount has to be the open market value pursuant to Article 13, paragraphs 1 and 2 of Italian Tax Law.

VAT recovery on pharmaceutical pay-backs

Pharmaceutical companies are allowed to recover VAT included in so-called “pay-back” amounts paid to the Italian Government for covering budget deficit related to the public health system. As for payments made prior to the entry into force of the Law, the deduction right can be exercised, at the latest, within the Annual VAT Return for 2018.

In order to recover VAT on pay-backs, pharmaceutical companies have to issue a specific accounting document to be kept according to art. 39 of the Italian VAT Law, indicating the paid amounts as determined by the Italian Pharma Agency (AIFA).

Energy products: tax warehouse and registered consignee

The Italian Budget Law of 2018 introduces new provisions regarding some energy products. In particular:

- The release for consumption from the tax warehouse or the removal from the commercial warehouse must be preceded by the VAT payment through form F24 by the subject on behalf of which the goods are released for consumption or removed from the aforementioned warehouses. In fact, the VAT payment receipt should be delivered to the warehouse manager before goods being released for consumption or removal.
- The requirement of an authorization from the Customs Authority in order to store energy products in a third-party tax warehouse or a warehouse of a registered consignee.

For the economic operators, who are also the tax warehouse manager of energy products in Italy, the above-mentioned authorization is replaced by a communication, with annual validity, to be transmitted to the Customs Authority before the first storage of the goods.

Electronic bookkeeping

The electronic bookkeeping procedure is simplified: in fact, the taxpayer is required to print electronic VAT ledgers only upon specific request of the Italian Tax Authorities during an audit.
Penalty for the incorrect application of VAT

The Budget Law changes art. 6 of the legislative Decree 471/97 related to penalties for the incorrect application, and consequently incorrect deduction, of VAT. The new provision, more favorable than the prior one, states that VAT wrongly charged can be recovered by the customer and only a formal penalty from €250 to €10,000 is applicable (this simplification does not apply in the case of tax frauds).

Endnotes

1. See EY Global Tax Alert, Italian VAT law implements Skandia principles affecting intra-group supplies, dated 8 January 2018.

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Indirect Tax

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